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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

JAN 28 2003

In the Matter of

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Gonzales, Houma and Westwego, Louisiana,  
and Hattiesburg, Mississippi)

MB Docket No. 02-295  
RM- 10580

TO: Assistant Chief, Audio Division  
Media Bureau

**OPPOSITION TO MOTION TO STRIKE**

Guaranty Broadcasting Company, LLC ("Guaranty"), by its attorneys, hereby opposes the Motion to Strike its "Reply to Reply Comments, Opposition to Motion to Accept Comments as Timely Filed, and Opposition to Petition for Consolidation" (the "Reply") filed by Clear Channel Broadcasting Licenses, Inc. ("Clear Channel") on January 13, 2003. In its Reply, Guaranty responded to Clear Channel's newly submitted *Tuck* showing for Gonzales, Louisiana, and its Oppositions to Guaranty's Motion to Accept Comments as Timely Filed and Petition for Consolidation. While Clear Channel attempts to characterize Guaranty's Reply as an unauthorized surreply, in fact, Guaranty was entitled to respond to Clear Channel's new evidence as well as its Oppositions to Guaranty's initial pleadings.

Clear Channel focuses its Motion to Strike on Guaranty's response to its belated *Tuck* showing, arguing that Guaranty could have presented its arguments earlier because the showing "was simply a reorganization into the *Tuck* categories of material previously presented to the Commission in its initial petition." Motion at 2. This argument ignores Clear Channel's claim, made in its initial Petition for Rule Making, that a *Tuck* showing was unnecessary because

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Gonzales was located outside all Urbanized Areas. See Petition at 11-12. Thus, the information presented in Clear Channel's Petition was ostensibly included to demonstrate that Gonzales was a community, not to demonstrate compliance with *Tuck*. Based on this understanding and on Clear Channel's own representation, Guaranty pointed out that Gonzales is part of the Baton Rouge Urbanized Area so that a *Tuck* showing was indeed required and specifically reserved the right to comment on any *Tuck* showing that Clear Channel chose to submit. See Opposition Comments and Alternate Proposal at 15-18. At that point, Guaranty did not know how, if at all, Clear Channel would try to demonstrate Gonzales' independence from the Baton Rouge Urbanized Area. Contrary to Clear Channel's implication, the burden was not on Guaranty to compose a *Tuck* showing from the Gonzales community information included in Clear Channel's Petition; that burden was Clear Channel's. See *Malvern und Bryant, Arkansas*, 14 FCC Rcd 3576 (1996) (*Tuck* showing required of petitioner where proposed community was only partly within Urbanized Area and station would serve less than 1% of Urbanized Area). In fact, if Clear Channel truly believed that the information it had previously submitted constituted an adequate *Tuck* showing, then there was no need for it to rearrange and resubmit this material in Reply Comments.

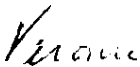
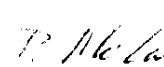

Moreover, in seeking to strike Guaranty's Reply, Clear Channel conveniently ignores the fact that its own Reply Comments did more than simply reply to Guaranty's Opposition Comments in the instant proceeding. In fact, included within its response were Oppositions to Guaranty's separately filed Motion to Accept Comments as Timely Filed and Petition for Consolidation. Pursuant to the Commission's rules, Guaranty was entitled to reply to these consolidated Oppositions. See 47 C.F.R. § 1.45. As Clear Channel's Oppositions were filed on December 3, 2002, Guaranty's Reply to those Oppositions was due by December 13, 2002, the

day on which it filed. *See* 47 C.F.R. §§ 1.45 (c) (five days to file a reply to opposition), 1.4(g), (h) (intervening holidays not counted in computing five day filing period, three extra days to file if opposition served by mail). Accordingly, the Commission may not disregard Guaranty's Reply.

For these reasons, Clear Channel's Motion to Strike must be denied.

Respectfully submitted,

Guaranty Broadcasting Company, LLC

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Dated: January 28, 2003

**CERTIFICATE OF SERVICE**

I, Rosalie Thorpe, do hereby certify that I have this 28<sup>th</sup> day of January, 2003, mailed by first-class United States mail, postage prepaid, copies of the foregoing "OPPOSITION TO MOTION TO STRIKE" to the following:

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\*Via Hand Delivery